



Commonwealth of Virginia

VIRGINIA DEPARTMENT OF ENVIRONMENTAL QUALITY

TIDEWATER REGIONAL OFFICE
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Travis A. Voyles
Secretary of Natural and Historic Resources

Michael S. Rolband, PE, PWD, PWS Emeritus
Director
(804) 698-4020

Craig R. Nicol
Regional Director

**VIRGINIA DEPARTMENT OF ENVIRONMENTAL QUALITY
ENFORCEMENT ACTION - ORDER BY CONSENT
ISSUED TO
WHEELABRATOR PORTSMOUTH, INC.
FOR
WHEELABRATOR WASTE TO ENERGY FACILITY
REGISTRATION NO. 61018**

SECTION A: Purpose

This is a Consent Order issued under the authority of Va. Code §§ 10.1-1309 and -1316, between the Virginia Department of Environmental Quality and Wheelabrator Portsmouth, Inc. for the purpose of resolving certain violations of the Virginia Air Pollution Control Law, and the applicable regulations.

SECTION B: Definitions

Unless the context clearly indicates otherwise, the terms in this Consent Order have the meaning assigned to them in Va. Code §10.1-1300 *et seq.* and the Regulations for the Control and Abatement of Air Pollution (Regulations) at 9 VAC 5-10 *et seq.*

SECTION C: Findings of Fact and Conclusions of Law

1. Wheelabrator Portsmouth, Inc. ("Wheelabrator") is a business entity authorized to do business in Virginia and references to Wheelabrator includes its affiliates, partners, and subsidiaries. Wheelabrator is a "person" with the meaning of Va. Code § 10.1-1300.
2. Wheelabrator owns and operates the refuse and coal fired steam generating plant that includes four combustion boilers located at 3809 Elm Avenue Portsmouth, Virginia 23704 ("Facility").
3. On August 23, 2003, DEQ issued a minor New Source Review Stationary Source Permit ("Minor NSR Permit") amendment to for the Prevention of Signification Deterioration

Permit to a former owner of the Facility. The amendment was to Construct and Operate a refuse and coal fired steam generating plant that included four combustion boilers at the Facility. Wheelabrator acquired the Facility in 2010 and is subject to the Minor NSR Permit.

4. On October 11, 2013, DEQ issued a renewed Title V Stationary Source Permit ("Title V Permit") to Wheelabrator to operate a Refused Derived Fuel Processing Facility & Waste to Energy Plant that included four combustion boilers at the Facility.
5. On December 19, 2022, with subsequent information on January 31, 2023, DEQ received reports from Wheelabrator for the Facility of the No. 2 fuel oil consumed for each of the four Facility Waste to Energy ("WTE") boilers.
6. The report lists the below throughputs of No. 2 fuel oil, calculated monthly as the sum of each consecutive 12-month period as seen on the table below:

Date	Boiler # as reported	Corresponding Boiler # according to the Permit NSR/T5 Permits	Gallons #2 fuel oil combusted per year rolling 12
July 2022	1	1/044	99,611
July 2022	3	3/046	94,792
August 2022	1	1/044	99,881
August 2022	3	3/046	98,917
September 2022	1	1/044	96,458
September 2022	3	3/046	94,999
October 2022	1	1/044	95,101
November 2022	1	1/044	96,254
December 2022	1	1/044	94,092
December 2022	2	2/045	110,640
December 2022	3	3/046	108,857
December 2022	4	4/047	102,506
January 2023	1	1/044	98,735
January 2023	2	2/045	104,478
January 2023	3	3/046	99,478
January 2023	4	4/047	94,839

7. The Minor NSR Permit Condition 13 and the Title V Permit Condition IV.A.5 state that the annual throughput of No. 2 fuel oil shall not exceed 94,000 gallons, calculated monthly as the sum of each consecutive 12-month period.
8. On February 8, 2023, DEQ issued to Wheelabrator NOV No. ATRO002408 for exceeding the Minor NSR Permit Condition 13 and Title V Permit Condition IV.A.5 limit of annual throughput for No. 2 fuel oil calculated monthly as the sum of each consecutive 12-month period, as indicated in the table above.

9. Based on the report submitted by Wheelabrator on January 3, 2023, the Department concludes that Wheelabrator violated the Minor NSR Permit Condition 13 and Title V Permit Condition IV.A.5 as described in paragraphs C(3) through C(8), above.
10. Wheelabrator maintains that exceedance of the annual No. 2 fuel limit was attributed in part to unforeseen events and the need to meet the ongoing steam demand at an adjacent facility.
11. In order for Wheelabrator to be considered in compliance, DEQ staff and representatives of Wheelabrator have agreed to the Schedule of Compliance, which is incorporated as Appendix A of the Consent Order ("Order").

SECTION D: Agreement and Order

Accordingly, by virtue of the authority granted it in Va. Code §§ 10.1-1309 and -1316, the Department orders Wheelabrator, and Wheelabrator agrees to pay a civil charge of \$13,000 within 30 days of the effective date of the Order in settlement of the violations cited in this Order.

Payment shall be made by check, certified check, money order or cashier's check payable to the "Treasurer of Virginia," and delivered to:

Receipts Control
Department of Environmental Quality
Post Office Box 1104
Richmond, Virginia 23218

Wheelabrator shall include its Federal Employer Identification Number (FEIN) _____ with the civil charge payment and shall indicate that the payment is being made in accordance with the requirements of this Order for deposit into the Virginia Environmental Emergency Response Fund (VEERF). If the Department has to refer collection of moneys due under this Order to the Department of Law, Wheelabrator Portsmouth, Inc. shall be liable for attorneys' fees of 30% of the amount outstanding.

SECTION E: Administrative Provisions

1. The Department may modify, rewrite, or amend this Order with the consent of Wheelabrator for good cause shown by Wheelabrator, or on its own motion pursuant to the Administrative Process Act, Va. Code § 2.2-4000 *et seq.*, after notice and opportunity to be heard.
2. This Order addresses and resolves only those violations specifically identified in Section C of this Order and in the Wheelabrator NOV No. ATRO002407 dated February 8, 2023. This Order shall not preclude the Department or the Director from taking any action authorized by law, including but not limited to: (1) taking any action authorized by law regarding any additional, subsequent, or subsequently discovered violations; (2) seeking subsequent remediation of the facility; or (3) taking subsequent action to enforce the

Order.

3. For purposes of this Order and subsequent actions with respect to this Order only, Wheelabrator admits the jurisdictional allegations, findings of fact, and conclusions of law contained herein.
4. Wheelabrator consents to venue in the Circuit Court of the City of Richmond for any civil action taken to enforce the terms of this Order.
5. Wheelabrator declares it has received fair and due process under the Administrative Process Act and the Virginia Air Pollution Control Law and it waives the right to any hearing or other administrative proceeding authorized or required by law or regulation, and to any judicial review of any issue of fact or law contained herein. Nothing herein shall be construed as a waiver of the right to any administrative proceeding for, or to judicial review of, any action taken by the Department to modify, rewrite, amend, or enforce this Order.
6. Failure by Wheelabrator to comply with any of the terms of this Order shall constitute a violation of an order of the Department. Nothing herein shall waive the initiation of appropriate enforcement actions or the issuance of additional orders as appropriate by the Department or the Director as a result of such violations. Nothing herein shall affect appropriate enforcement actions by any other federal, state, or local regulatory authority.
7. If any provision of this Order is found to be unenforceable for any reason, the remainder of the Order shall remain in full force and effect.
8. Wheelabrator shall be responsible for failure to comply with any of the terms and conditions of this Order unless compliance is made impossible by earthquake, flood, other acts of God, war, strike, or such other unforeseeable circumstances beyond its control and not due to a lack of good faith or diligence on its part. Wheelabrator shall demonstrate that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. Wheelabrator shall notify the DEQ Regional Director verbally within 24 hours and in writing within three business days when circumstances are anticipated to occur, are occurring, or have occurred that may delay compliance or cause noncompliance with any requirement of the Order. Such notice shall set forth:
 - a. The reasons for the delay or noncompliance;
 - b. The projected duration of any such delay or noncompliance;
 - c. The measures taken and to be taken to prevent or minimize such delay or noncompliance; and
 - d. The timetable by which such measures will be implemented and the date full compliance will be achieved.

Failure to so notify the Regional Director verbally within 24 hours and in writing within three business days, of learning of any condition above, which the parties intend to assert will result in the impossibility of compliance, shall constitute a waiver of any claim to inability to comply with a requirement of this Order.

9. This Order is binding on the parties hereto and any successors in interest, designees and assigns, jointly and severally.
10. This Order shall become effective upon execution by both the Director or his designee and Wheelabrator. Nevertheless, Wheelabrator agrees to be bound by any compliance date, which precedes the effective date of this Order.
11. This Order shall continue in effect until:
 - a. The Director or his designee terminates the Order after Wheelabrator has completed all of the requirements of the Order;
 - b. Wheelabrator petitions the Director or his designee to terminate the Order after it has completed all of the requirements of the Order and the Director or his designee approves the termination of the Order; or
 - c. The Director or Department terminates the Order in his or its sole discretion upon 30 days' written notice to Wheelabrator

Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve Wheelabrator from its obligation to comply with any statute, regulation, permit condition, other order, certificate, certification, standard, or requirement otherwise applicable.

12. Any plans, reports, schedules or specifications attached hereto or submitted by Wheelabrator and approved by the Department pursuant to this Order are incorporated into this Order. Any non-compliance with such approved documents shall be considered a violation of this Order.
13. The undersigned representative of Wheelabrator certifies that he or she is a responsible official authorized to enter into the terms and conditions of this Order and to execute and legally bind Wheelabrator to this document. Any documents to be submitted pursuant to this Order shall also be submitted by a responsible official of Wheelabrator
14. This Order constitutes the entire agreement and understanding of the parties concerning settlement of the violations identified in Section C of this Order, and there are no representations, warranties, covenants, terms or conditions agreed upon between the parties other than those expressed in this Order.
15. By its signature below, Wheelabrator voluntarily agrees to the issuance of this Order.

And it is so ORDERED this _____ day of _____, 202_.

Craig Nicol, Regional Director
Department of Environmental Quality

Wheelabrator Portsmouth, Inc. voluntarily agrees to the issuance of this Order.

Date: 4/5/2023 By: RONNIE STRATTON Plant Manager
(Person) (Title)
Wheelabrator Portsmouth, Inc.

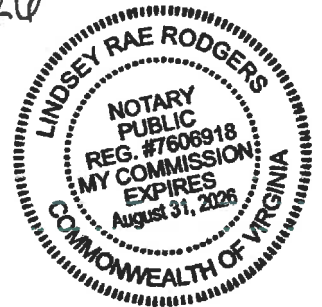
Commonwealth of Virginia
City/County of Portsmouth

The foregoing document was signed and acknowledged before me this 5th day of
April, 2023 by Ronnie Stratton who is
Plant Manager of Wheelabrator Portsmouth, Inc. on behalf of the County.

Lindsey R. Rodgers
Notary Public
#7606918
Registration No.

My commission expires: August 31, 2026

Notary seal:



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**APPENDIX A
SCHEDULE OF COMPLIANCE**

1. Wheelabrator shall:
 - a. Submit to DEQ a corrective action plan (“CAP”) and schedule to achieve compliance with the Permit for review and approval within 30 days of the effective date of this Order.
 - b. Respond to DEQ comments regarding the CAP within 30 days of receipt.
2. Wheelabrator shall complete corrective action in accordance with the CAP as expeditiously as possible, but no later than January 1, 2025.
3. Unless otherwise specified in this Order, Wheelabrator shall submit all requirements of Appendix A of this Order to:

Craig R. Nicol
Regional Director
VA DEQ – Tidewater Regional Office
5636 Southern Boulevard
Virginia Beach, Virginia